

1 Michele Haydel Gehrke (SBN 215647)
mgehrke@reedsmith.com
2 Natalie Ochoa (SBN 328597)
nochoa@reedsmith.com
3 REED SMITH LLP
4 101 Second Street, Suite 1800
San Francisco, CA 94105-3659
5 Telephone: +1 415 543 8700
Facsimile: +1 415 391 8269
6 *Attorneys for Defendant
United Airlines, Inc.*

7 Richard Vaznaugh (SBN 173249)
8 Law Office of Richard Vaznaugh
9 505 Sansome Street, Suite 850
10 San Francisco, CA 94111
Office: 415-593-0076
richvaz@cajoblaw.com
Attorney for Plaintiff
Joshua Sablan

JOSHUA SABLAR,
Plaintiff,

UNITED AIRLINES and DOES 1-20,
inclusive,

Defendants.

Case No.: 3:21-CV-04799 CRB

STIPULATED PROTECTIVE ORDER

San Francisco County Superior Court
Case No.: CGC-21-591045
State Action Filed: April 4, 2020

1 Plaintiff JOSHUA SABLAM (“Plaintiff”) and Defendant UNITED AIRLINES, INC.
 2 (“Defendant”)¹, by and through their attorneys of record stipulate and agree to the following:

3 **1. PURPOSE AND LIMITATIONS**

4 Disclosure and discovery activity in this action are likely to involve production of confidential,
 5 proprietary, or private information for which special protection from public disclosure and from use
 6 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
 7 hereby stipulate to and petition the court to enter the following Stipulated Protective Order (“Order”).
 8 The parties acknowledge that this Order does not confer blanket protections on all disclosures or
 9 responses to discovery and that the protection it affords from public disclosure and use extends only
 10 to the limited information or items that are entitled to confidential treatment under the applicable legal
 11 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Order does
 12 not entitle them to file confidential information under seal. Civil Local Rule 79-5 sets forth the
 13 procedures that must be followed and the standards that will be applied when a party seeks permission
 14 from the court to file material under seal.

15 **2. DEFINITIONS**

16 2.1. Challenging Party. A Party or Non-Party that challenges the designation of information
 17 or items under this Order.

18 2.2. “CONFIDENTIAL” Information or Items. Information (regardless of how it is
 19 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
 20 Civil Procedure 26(c).

21 2.3. Counsel (without qualifier). Outside Counsel of Record and House Counsel (as well as
 22 their support staff).

23 2.4. Designating Party. A Party or Non-Party that designates information or items that it
 24 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

25 2.5. Disclosure or Discovery Material. All items or information, regardless of the medium
 26 or manner in which it is generated, stored, or maintained (including, among other things, testimony,

27 ¹ The Complaint erroneously named “United Airlines” as the defendant in this action. The correct
 28 entity is United Airlines, Inc., a wholly owned subsidiary of the publicly held corporation United
 Airlines Holding, Inc. (NYSE:UAL).

1 transcripts, and tangible things), that are produced or generated in disclosures or responses to
2 discovery in this matter.

3 2.6. Expert. A person with specialized knowledge or experience in a matter pertinent to the
4 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
5 in this action.

6 2.7. House Counsel. Attorneys who are employees of a party to this action. House Counsel
7 does not include Outside Counsel of Record or any other outside counsel.

8 2.8. Non-Party. Any natural person, partnership, corporation, association, or other legal
9 entity not named as a Party to this action.

10 2.9. Outside Counsel of Record. Attorneys who are not employees of a party to this action
11 but are retained to represent or advise a party to this action and have appeared in this action on behalf
12 of that party or are affiliated with a law firm which has appeared on behalf of that party.

13 2.10. Party. Any party to this action, including all of its officers, directors, employees,
14 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

15 2.11. Producing Party. A Party or Non-Party that produces Disclosure or Discovery Material
16 in this action.

17 2.12. Professional Vendors. Persons or entities that provide litigation support services (e.g.,
18 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
19 or retrieving data in any form or medium) and their employees and subcontractors.

20 2.13. Protected Material. Any Disclosure or Discovery Material that is designated as
21 “CONFIDENTIAL.”

22 2.14. Receiving Party. A Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 **3. SCOPE**

25 The protections conferred by this Stipulation and Order cover not only Protected Material (as
26 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
27 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
28 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 However, the protections conferred by this Stipulation and Order do not cover the following
2 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
3 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
4 publication not involving a violation of this Order, including becoming part of the public record
5 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure
6 or obtained by the Receiving Party after the disclosure from a source who obtained the information
7 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected
8 Material at trial shall be governed by a separate agreement or order.

9 **4. DURATION**

10 Even after final disposition of this litigation, the confidentiality obligations imposed by this
11 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
12 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
13 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
14 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
15 limits for filing any motions or applications for extension of time pursuant to applicable law.

16 **5. DESIGNATING PROTECTED MATERIAL**

17 **5.1. Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
18 Non-Party that designates information or items for protection under this Order must take care to limit
19 any such designation to specific material that qualifies under the appropriate standards. The
20 Designating Party must designate for protection only those parts of material, documents, items, or oral
21 or written communications that qualify – so that other portions of the material, documents, items, or
22 communications for which protection is not warranted are not swept unjustifiably within the ambit of
23 this Order.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
25 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
26 encumber or retard the case development process or to impose unnecessary expenses and burdens on
27 other parties) expose the Designating Party to sanctions.

28 ///

1 If it comes to a Designating Party's attention that information or items that it designated for
 2 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
 3 that it is withdrawing the mistaken designation.

4 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see,
 5 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
 6 Discovery Material that qualifies for protection under this Order must be clearly so designated before
 7 the material is disclosed or produced. Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
 9 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
 10 legend "CONFIDENTIAL" to each page that contains protected material. If only a portion or portions
 11 of the material on a page qualifies for protection, the Producing Party also must clearly identify the
 12 protected portion(s) (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents or materials available for inspection need
 14 not designate them for protection until after the inspecting Party has indicated which material it would
 15 like copied and produced. During the inspection and before the designation, all of the material made
 16 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified
 17 the documents it wants copied and produced, the Producing Party must determine which documents,
 18 or portions thereof, qualify for protection under this Order. Then, before producing the specified
 19 documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page that contains
 20 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the
 21 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 22 markings in the margins).

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 24 Designating Party identify on the record, before the close of the deposition, hearing, or other
 25 proceeding, all protected testimony.

26 (c) for information produced in some form other than documentary and for any other tangible
 27 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
 28 in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions

1 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
 2 identify the protected portion(s).

3 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 4 designate qualified information or items does not, standing alone, waive the Designating Party's right
 5 to secure protection under this Order for such material. Upon timely correction of a designation, the
 6 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
 7 the provisions of this Order.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of
 10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
 12 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 13 confidentiality designation by electing not to mount a challenge promptly after the original designation
 14 is disclosed.

15 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
 16 providing written notice of each designation it is challenging and describing the basis for each
 17 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
 18 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
 19 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
 20 process by conferring directly (in voice to voice dialogue; other forms of communication are not
 21 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
 22 explain the basis for its belief that the confidentiality designation was not proper and must give the
 23 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
 24 and, if no change in designation is offered, to explain the basis for the chosen designation. A
 25 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
 26 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
 27 meet and confer process in a timely manner.

28 ///

1 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without court
 2 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
 3 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial
 4 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not
 5 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent
 6 declaration affirming that the movant has complied with the meet and confer requirements imposed in
 7 the preceding paragraph. Failure by the Designating Party to make such a motion including the
 8 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
 9 confidentiality designation for each challenged designation. In addition, the Challenging Party may
 10 file a motion challenging a confidentiality designation at any time if there is good cause for doing so,
 11 including a challenge to the designation of a deposition transcript or any portions thereof. Any motion
 12 brought pursuant to this provision must be accompanied by a competent declaration affirming that the
 13 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
 15 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
 16 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
 17 Designating Party has waived the confidentiality designation by failing to file a motion to retain
 18 confidentiality as described above, all parties shall continue to afford the material in question the level
 19 of protection to which it is entitled under the Producing Party's designation until the court rules on the
 20 challenge.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 23 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 24 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
 25 categories of persons and under the conditions described in this Order. When the litigation has been
 26 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 27 DISPOSITION).

28 ///

1 Protected Material must be stored and maintained by a Receiving Party at a location and in a
2 secure manner that ensures that access is limited to the persons authorized under this Order.

3 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
4 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
5 information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
7 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
8 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached
9 hereto as Exhibit A;

10 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
11 whom disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (**Exhibit A**);

20 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
21 and who have signed the “Acknowledgment and Agreement to Be Bound” (**Exhibit A**), unless
22 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
23 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the
24 court reporter and may not be disclosed to anyone except as permitted under this Order.

25 (g) the author or recipient of a document containing the information or a custodian or other
26 person who otherwise possessed or knew the information.

27 ///

28 ///

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 2 **LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
 4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
 5 must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
 7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
 9 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
 10 Order. Such notification shall include a copy of this Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
 12 Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
 14 court order shall not produce any information designated in this action as “CONFIDENTIAL” before
 15 a determination by the court from which the subpoena or order issued, unless the Party has obtained
 16 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
 17 seeking protection in that court of its confidential material – and nothing in these provisions should be
 18 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
 19 from another court.

20 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
 21 **LITIGATION**

22 The following is hereby agreed upon by the parties:

23 (a) The terms of this Order are applicable to information produced by a Non-Party in this action
 24 and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with
 25 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
 26 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

27 ///

28 ///

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all
5 of the information requested is subject to a confidentiality agreement with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Order in this litigation, the
7 relevant discovery request(s), and a reasonably specific description of the information requested; and

8 (3) make the information requested available for inspection by the Non-Party.

9 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
10 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's
11 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
12 order, the Receiving Party shall not produce any information in its possession or control that is subject
13 to the confidentiality agreement with the Non-Party before a determination by the court. Absent a
14 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in
15 this court of its Protected Material.

16 | **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” ([Exhibit A](#)).

23 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
24 **MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production

1 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 2 parties reach an agreement on the effect of disclosure of a communication or information covered by
 3 the attorney-client privilege or work product protection, the parties may incorporate their agreement
 4 in the stipulated protective order submitted to the court.

5 **12. MISCELLANEOUS**

6 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 7 its modification by the court in the future.

8 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 9 no Party waives any right it otherwise would have to object to disclosing or producing any information
 10 or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on
 11 any ground to use in evidence of any of the material covered by this Protective Order.

12 12.3. Filing Protected Material. Without written permission from the Designating Party or a
 13 court order secured after appropriate notice to all interested persons, a Party may not file in the public
 14 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
 15 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to
 16 a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
 17 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at
 18 issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
 19 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is
 20 denied by the court, then the Receiving Party may file the information in the public record pursuant to
 21 Civil Local Rule 79-5(e) unless otherwise instructed by the court.

22 **13. MISCELLANEOUS**

23 Within 60 days after the final disposition of this action, as defined in Paragraph 4, each
 24 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
 25 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 26 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
 27 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
 28 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day

1 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
2 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
3 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
4 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
5 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
6 trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if
7 such materials contain Protected Material. Any such archival copies that contain or constitute
8 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

10
11 DATED: 8/24/21

LAW OFFICE OF RICHARD J. VAZNAUGH

12 By: 

13
14 Richard J. Vaznaugh
15 *Attorneys for Plaintiff*
16 *Joshua Sablan*

17 DATED: 8/24/2021

18 REED SMITH LLP

19 By: 

20 Michele Haydel Gehrke
21 Nat Ochoa
22 *Attorneys for Defendant*
23 *United Airlines, Inc.*

24 **PURSUANT TO THE STIPULATION, IT IS SO ORDERED.**

25
26 DATED: August 26, 2021

27
28 Honorable Charles R. Breyer

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print
4 or type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of *Joshua Sablan v. United Airlines and DOES 1-20,*
7 *inclusive*, Case No. 3:21-CV-04799 CRB. I agree to comply with and to be bound by all the terms of
8 this Stipulated Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
10 disclose in any manner any information or item that is subject to this Stipulated Protective Order to
11 any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

20 Date: _____

21 | City and State where sworn and signed: _____

23 Printed name:

25 || Signature: